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SUPREME COURT, U. S.

No. 73-1263

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In the Supreme Court of the United States

OCTOBER TERM, 1973

THE PEARSON BROS. COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ROBERT H. BORK,
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General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

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1. The Board found that The Pearson Bros. Company (the Company) violated Section 8(a)(1) of the National Labor Relations Act by interrogating employees concerning union activities, threatening employees who engaged in union activities with loss of their jobs and threatening to close its plant if the union campaign were successful (Pet. App. 11a-15a). Additionally, the Board found that the Company violated Section 8(a)(3) and (1) of the Act by laying off or discharging 12 employees for engaging in union activity. This conclusion was based on the finding that the Company "did not on January 13 and 14, 1972, carry out a reduction in force for economic reasons, a course of conduct which would have been warranted, but instead utilized the stratagem of a reduction in force as a pretext to rid itself of union adherents" (Pet. App.

26a). The Board entered an appropriate remedial order (Pet. App. 28a-30a), which the court of appeals enforced (Pet. App. 35a-37a).

2. The petition rests on the premise that the layoff of the 12 employees was motivated by economic considerations. The Board found, however, and the court of appeals sustained its finding, that the layoff was in fact motivated by anti-union considerations. In these circumstances, the petition presents only an evidentiary issue which does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. Moreover, the facts detailed in the Board's decision (Pet. App. 15a-26a) and in the court of appeals' opinion (Pet. App. 35a-37a) demonstrate that the Board's finding is supported by the record.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

MARCH 1974.